

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

FAUSTINO M.,

Claimant,

and

SOUTH CENTRAL LOS ANGELES  
REGIONAL CENTER,

Service Agency.

OAH No. 2010070174

**DECISION**

Jennifer M. Russell, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on May 12, 2011.

Erika B., claimant Faustino M.'s mother, represented claimant.<sup>1</sup> Spanish language interpreter services were provided.

Johanna Arias-Bhatia, Fair Hearing/Government Affairs Manager, represented South Central Los Angeles Regional Center (service agency or SCLARC).

Testimonial and documentary evidence was received, the case argued, and the matter submitted for decision on May 12, 2011. The Administrative Law Judge makes the following Factual Findings, Legal Conclusions, and Order.

**ISSUE**

Should the service agency continue to fund disposable diapers for claimant.

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<sup>1</sup> Initials are used to preserve confidentiality.

## FACTUAL FINDINGS

1. Claimant is a six-year-old consumer of SCLARC. Although his qualifying diagnosis was not clearly established at hearing,<sup>2</sup> an April 21, 2011 Annual Consumer Contact (Face to Face) indicates that claimant has “seizures during the day, but mostly at night.” His medications include clonidine, lamotrigine, levetiracetam, and divalproex. Claimant has no bladder or bowel control. He is diaper dependent. SCLARC funds two cases of *Huggies* diapers<sup>3</sup> per month for claimant.

2. On July 15, 2010, the service agency notified claimant’s mother of its proposed action to terminate “[d]iaper funding effective July 30, 2010.” The service agency’s rationale for terminating this service was as follows:

Per South Central L.A. Regional Center . . . Purchase of Service (POS) Funding Standards, “if the consumer is Medi-cal eligible, Medi-Cal will purchase disposable diapers when the consumer is five (5) years of age and above with the physician’s prescription as well as a letter from the school.” It is evident from the facts that . . . [claimant] is five years old. Therefore, SCLARC policy dictates that . . . [claimant] does not meet the criteria for the funding of diapers any longer.

Additionally, POS Funding Standard section 2500 states that “SCLARC will not purchase vendored services and supports which are a duplication of the generic services available to the consumer. All appropriate options for meeting each IPP objective must be considered before the expenditure of SCLARC funds.”

SCLARC’s denial of the diapers is also based on the fact that not only does . . . [claimant] not meet the criteria, but this is a duplication of services that essentially serves the same purpose as which is being funded by Medi-Cal.

In support of its proposed action, the service agency relied on Welfare and Institutions Code section 4512, subdivision (b).

3. Claimant’s mother filed a June 30, 2010 Fair Hearing Request stating the following:

I’m not in agreement that they take away the services of diapers and transportation.<sup>4</sup> The family has no resources to pay for those services: diapers and transportation.

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<sup>2</sup> Neither party produced claimant’s Individual Program Plan.

<sup>3</sup> Claimant is allergic to other diaper brands.

<sup>4</sup> Issues regarding the service agency’s funding of transportation services for claimant were resolved prior to hearing.

Thereafter, these proceedings ensued.

4. The service agency continues to fund *Huggies* diapers for claimant pending administrative resolution of the matter.

5. The service agency's funding standards require it to commence an application process for obtaining funding from Medi-Cal for disposable diapers. Medi-Cal requires a physician prescription justifying incontinent supplies.

6. The service agency was unable to complete the Medi-Cal application because it did not have the required prescription from claimant's physician.

7. At hearing, claimant's mother produced a letter from Dr. Maritza Ruiz, claimant's pediatrician, stating the following:

[Claimant] suffers from a severe developmental delay and seizure disorder secondary to an encephalopathy. Due to his condition . . . [claimant] requires diapers because he cannot be toilet trained. He has had severe diaper dermatitis with different diaper brands and the only diaper that . . . [claimant] has been able to tolerate is the "Huggies" brand.

Claimant's mother additionally produced a prescription for "Huggies Diapers," with directions to "use as needed."

8. The service agency will continue to assist claimant's mother with the Medi-Cal application process.

## LEGAL CONCLUSION

1. Under the Lanterman Developmental Disabilities Services Act (Lanterman Act), the services and supports to be funded for a consumer must be in conformance with the service agency's purchase of service policies. (Welf. & Inst. Code, § 4646.4, subd. (a)(1)).

2. The service agency's POS Funding Standards for disposable diapers requires consumers older than five years to access generic resources such as Medi-Cal for diapers for total or permanent incontinence. In the event that Medi-Cal denies a funding request, the consumer's parent is required to document the denial. Where the request for funding is due to financial hardship, the service coordinator is required to request financial information from the consumer's parent and review the diaper policy with the family. (Exhibit 5)

3. The Lanterman Act requires the service agency to use "generic services and supports when appropriate." (Welf. & Inst. Code, § 4646.4, subd. (a)(2)).

4. Cause exists to deny claimant's appeal by reason of Factual Findings 1 through 8, inclusive, and Legal Conclusions 1 through 3, inclusive, in that after attaining age five-years-old, the service agency's funding standards require claimant to obtain funding for disposable diapers from a generic resource. To avoid duplication of services, the service agency is required to discontinue its funding of claimant's *Huggies* diapers.

#### ORDER

The South Central Los Angeles Regional Center shall discontinue funding disposable diapers for claimant Faustino M. provided that claimant successfully obtains such funding from a generic resource.

Dated: May 26, 2011

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JENNIFER M. RUSSELL  
Administrative Law Judge  
Office of Administrative Hearings

**NOTICE:**  
**THIS IS THE FINAL ADMINISTRATIVE DECISION. THIS DECISION BINDS BOTH PARTIES. EITHER PARTY MAY APPEAL THIS DECISION TO A COURT OF COMPETENT JURISDICTION WITHIN 90 DAYS.**